IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10254 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NARANBHAI JIVABHAI KAKADIYA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10254 of 2001

MR MEHUL H RATHOD for Petitioner No. 1-2

MR HC PATEL, AGP for Respondent No. 1,3

MR SUDHIR SHAH for Respondent No. 2,4

NOTICE SERVED BY DS for Respondent No. 5

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 07/05/2002

ORAL JUDGEMENT

Rule. Mr HC Patel, learned AGP for respondent Nos. 1 and 3 and Mr Sudhir Shah with Mr Pranav Shah, learned counsel for respondent Nos. 2 and 4 waive service of Rule.

2. What is challenged in this petition under Article 226 of the Constitution is the order dated 18.5.2001 passed by the Joint Secretary (Appeals) in the Revenue Department of the State Government by which the State Government dismissed the petitioners' revision application against the order dated 23.6.1997 passed by the District Development Officer, Amreli.

3. The Damnagar Gram Panchayat had held auction of village site plots on 21.12.1995. The petitioners' bid for purchasing one of the plots being Plot No. 23 at Rs.3,36,496/- was found to be the highest. Accordingly, the petitioners paid 25% of the purchase price being Rs.84,124/-. The petitioners were required to pay the balance price of Rs.2,52,372/by 30.1.1997. In the meantime, some proceedings came to be instituted against the auction of the plots. The said challenge also included challenge to the lay-out plan. The challenge was also made in Special Civil Application No. 8254 of 1996 which came to be disposed of on 18.3.1997 on the ground that alternative remedy was available by way of a revision under Section 259 of the Gujarat Panchayats Act. That petition was accordingly disposed of on that ground and the interim relief granted during pendency of that petition was vacated, but Mr Kanabar for the Gram Panchayat made a statement that "status quo qua the possession of the plots prevailing as on today shall be maintained till 31.3.1997."

3. Pursuant to the above order, the petitioners in that petition challenged the auction proceedings before the Special Secretary, Revenue Department who passed the following order on 4.4.1997 (translated in English) :-

> "The revision application is partly allowed. In view of paragraphs 3 and 4 of this order, as indicated in para 5 hereinabove, the matter is remanded to the District Development Officer, Amreli for taking a fresh decision on the question of right for entering the village and regarding the lay-out plan which decision shall be taken after hearing the applicants. Till the District Development Officer, Amreli takes the decision, as regards implementation of the District Development Officer's order dated 27.9.1996, status quo shall be maintained."

Pursuant to the order of remand, the District Development Officer took the final decision on 23.6.1997 (Annexure "E"). As per the said order, the wider road

was required to be provided for reducing the area of plot Nos. 1, 13, 14, 25 and 26. On 27.6.1997, the District Development Officer passed an order (Annexure "F") forfeiting the deposit of Rs.84,124/- paid by the petitioners and cancelling the auction of plot No. 23 on the ground that the petitioners had not paid the balance amount of Rs.2,52,372/- within the stipulated time limit of 30.1.1997. Aggrieved by the said order, the petitioners challenged the same in revision which came to be dismissed by the Special Secretary. Hence, this petition.

4. Mr Mehul Rathod, learned counsel for the petitioners has submitted that when the petitioners were granted extended time limit of 30.1.1997 for paying the balance 75% of the purchase price, but before the petitioners could pay the amount, the order of status quo came to be passed by this Court in Special Civil Application No. 8254 of 1996 and status quo qua possession of the plots was continued as per the statement recorded by this Court, till 31.3.1997 and the Special Secretary passed the order dated 7.4.1997 and ultimately the Special Secretary remanded the matter to the District Development Officer and directed maintenance of status quo and the District Development Officer finally decided the matter on 23.6.1997 as per Annexure "E". Hence the petitioners were not required to pay the purchase price to the panchayat nor had the panchayat called upon the petitioners to pay the balance 75% of the purchase price. It is further submitted that in this view of the matter, there was no justification for the District Development Officer to pass the impugned order dated 27.9.1997 for cancelling the auction and forfeiting 25% amount paid by the petitioners. Further grievance made is that the said order was passed without giving the petitioners an opportunity of hearing or to show cause why the petitioners should not be granted any further time for making the payment of the balance purchase price.

5. On the other hand, Mr Pranav Shah with Mr Sudhir Shah, learned counsel for the District Development officer, Amreli and also for the gram panchayat have submitted that the status quo was only qua possession of the plots in question and in any case, plot No. 23 was not one of the disputed plots as found by the District Development Officer. In his order dated 23.6.1997, the District Development Officer had directed reduction in the area of plot Nos. 1, 13, 14, 25 and 26 which were abutting on the road which was to be widened. Hence, there was no justification for the petitioners not to pay

the balance 75% purchase price. It is submitted that in any view of the matter, money had remained with the petitioners and, therefore, if at all the petitioners are to be given any relief, the petitioners should be required to pay 18% compound rate of interest on the original amount or the petitioners may pay off the price of the present market value as decided by the competent authority minus the amount already paid.

6. In rejoinder, Mr Rathod for the petitioner states that apart from the fact that the petitioners had paid the entire purchase price for which the petitioners' offer was accepted, the petitioners have never been given the possession of the land in question and the claim for interest would have been justified only if the petitioners were offered possession of the land. The demand of the panchayat is, therefore, unreasonable. It is further pointed out by Mr Rathod from the order dated 23.6.1997 (Annexure "E" - pg. 45) that the very fact that the petitioenrs were given protection by the District Development Officer in the procedings in which the status quo order was operating, is sufficient to justify the petitioners not paying the purchase price or the petitioners not being handed over possession of the land in question. Mr Rathod submits that it is clear that the petitioners were not strangers to the proceedings before the District Development Officer and the Special Secretary and, therefore, when the panchayat did not hand over possession of plot No. 23, the petitioners were not, therefore, under an obligation to pay the balance purchase price to the panchayat.

7. Having heard the learned counsel for the parties, it appears to the Court that the statement made by the learned counsel for the panchayat in Special Civil Application No. 8254 of 1997 on 18.3.1997, the order dated 17.4.1997 passed by the Secretary (Appeals) (Annexure "D") and the District Development Officer's order dated 27.6.1997 (Annexure "F") all go to show that plot No. 23 was one of the plots which was a part of the entire lay-out plan which was the subject matter of the proceedings before the authorities and also the subject matter of the status quo order. In this background, the plea urged by the petitioners that just as the status quo order prevented the panchayat from handing over possession of the plot in question to the petitioners, similarly the petitioners were under no obligation to pay the balance price to the panchayat, will have to be treated as bona fide and, therefore, the District Development Officer was not justified in straightaway cancelling the auction and forfeiting the amount by the

impugned order dated 27.6.1997 (Annexure "F"). Hence, the alternative demand made by the panchayat that the petitioners should pay the market price minus the amount deposited or that the petitioners may be required to pay 18% interest cannot be said to be reasonable either and would be arbitrary.

8. At the same time, the amount of Rs.2,52,372/- had remained with the petitioners for the period from 1.2.1997 till the date of deposit on 10.12.2001. Hence, it appears to the Court that the interests of justice would be served if the following directions are issued:-

(i) the impugned order at Annexure "E" is hereby quashed.

(ii) if the petitioners pay simple interest at the rate of 9% (nine percent) p.a. on the amount of Rs.2,52,372/from 1.2.1997 till 10.12.2001 to the Gram Panchayat by 31.7.2002, Damnagar Gram Panchayat shall hand over possession of plot No. 23 and execute the necessary documents in favour of the petitioners by 31.8.2002.

(iii) in case the petitioners fail to pay the amount of interest at the above rate within the aforesaid time limit to the Gram Panchayat, the Gram Panchayat shall refund by 30.9.2002, the amount of Rs.3,36,496/- to the petitioners along with simple interest at the rate of 9% (nine percent) p.a. on the following amounts and periods:-

Interest for the period	on the amount
from 1-2-1997 till the date of refund	Rs.84,124/-
from 10-12-2001 till the date of refund	Rs.2,52,372/-

9. The petition is accordingly allowed in the aforesaid terms.

Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. Shah, J.)
sundar/-